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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

CRIMINAL APPEAL No. 394/2006

APPELLANT Trilok Singh, S/o Mukhtyar Singh, aged about 23 years, R/o Sector 7, Qtr. No. 11-A, Sadak – 15, Bhilainagar, Distt. Durg (CG)

VERSUS

RESPONDENT The State of Chhattisgarh, through P.S. Bhilainagar, Distt. Durg (CG)

CRIMINAL APPEAL No. 469/2006

APPELLANT Hitesh Kumar alias Chunnu, aged about 21 years, S/o Nandu Ram, R/o Sector 2, Street No. Avenue-C, Block No. 15-A, Bhilai Nagar, Distt. Durg (CG)

VERSUS

RESPONDENT The State of Chhattisgarh, through the Station House Officer, Police Station Janjgir, Distt. Janjgir, Champa (CG)

14-12-2007

Shri R.K. Jain with Shri Somkant Verma, Advocates for appellant Trilok Singh.

Shri Vivek Sharma, Counsel for appellant Hitesh Kumar alias Chunnu.

Shri Sandeep Yadav, Dy. Govt. Advocate, for the State.

2. Criminal Appeal No. 394/2006 at the instance of Trilok Singh and Criminal Appeal No. 469/2006 at the instance of Hitesh Kumar alias Chunnu are being disposed of by this common judgment as

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both these appeals are directed against the judgment of conviction and order of sentence dated 28th April, 2006 passed in S.T. No. 170/2003 whereby learned Sessions Judge, Durg has convicted them under Sections 392 and 398 of I.P.C. and sentenced each of them to undergo R.I. for 5 years with fine of Rs. 500/- and in default of payment of fine, to undergo R.I. for 3 months and to undergo R.I. for 7 years with fine of Rs. 500/- and in default of payment of fine, to undergo R.I. 3 months respectively. All the sentences have been directed to run concurrently.

3. As per the First Information Report case of the prosecution, in brief, is that on 2-11-2002 complainant K.I. Bhaskaran, Accountant of Suraj Auto Traders was on duty at about 8.45 p.m. and he kept Rs. 42,500/-, one driving licence, registration book of Luna, key ring of the office in a plastic bag and was proceeding to his home in the Luna of his son when the appellants stopped him, abused him by filthy language near Sector 10 Market as a result of which he fell down. They were on scooter. The pillion rider of the scooter started snatching the plastic bag from the handle of the Luna. When the complainant tried to prevent him from taking the bag, he pointed country made revolver at him and looted the plastic bag containing Rs. 42,500/-, driving licence and registration book and ran away towards Civic Centre on scooter. He gave description of the accused persons that they were between 25-30 years, the one who snatched the plastic bag was of short stature whereas the other was tall. The

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report was lodged in the police station Bhilai Nagar at 22.45 hrs on the same day.

During investigation, the appellants were arrested on 25-6-2003. On the basis of memorandum of Ex. P-4 of Hitesh Kumar, Rs. 11,000/- in the currency notes of 100 denomination was seized vide Ex. P-6. Similarly on the basis of memorandum of Trilok Singh of Ex. P-5, Rs. 14,000/- was seized from him vide Ex. P-7. Naib Tahsildar (P.W. 1) Shrikant Verma conducted test identification parade in the District Jail on 3-7-2003 where complainant K.I. Bhaskaran correctly identified the accused persons vide test identification memo of Ex. P-1 and P-2.

4. After completing investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Durg. During trial, prosecution examined 9 witnesses in all and thereafter statements of the accused persons were recorded in which they denied the evidence appearing against them in the prosecution case and pleaded innocence. Appellant Hitesh also stated that a sum of Rs. 11,000/- was, in fact, recovered by the police from his father under duress and he has been falsely implicated. Appellant Trilok also pleaded innocence and false implication. They also examined D.W. 1 Rakesh Kumar Dixit, D.W. 2 Prashant Somvanshi, D.W. 3 Nandu Ramteke and D.W. 4 Jaswant Singh in their defence.

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5. The trial Court after hearing learned counsel for the respective parties, convicted and sentenced the appellants as mentioned in para 1 of this judgment.

6. Learned counsel for the appellants submits that conviction of the appellants is based on the statement of complainant K.I. Bhaskaran who allegedly identified the accused persons in the test identification parade conducted on 3rd July, 2003, the Statement of P.W. 1 Shrikant Verma who conducted test identification parade vide memo of Ex. P-1 and P-2 and also on the ground that complainant K.I. Bhaskaran correctly identified the accused persons during trial. Conviction is also based on the recovery of looted currency note on the memorandum of accused persons which have been proved by the Investigating Officer Sunil David (P.W.8). It was argued that from perusal of the statement of the complainant, it would be evident that the test identification parade was conducted on 3-7-2003 i.e. almost after nine months of the incident. The complainant has admitted in his examination-in-chief that even before conducting the te identification parade, the appellants were shown to him by the police in the police station and thereafter he identified the appellants in the District Jail as the persons who were involved in the robbery. The dock identification of the accused persons after more than one year of the incident looses significance in view of the fact that the appellants were shown to the complainant by the police firstly in the police station and thereafter in the test identification parade. It was further

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argued that the only witness Raju Yadav (P.W. 5) of memorandum and seizure of looted money has not supported the case of the prosecution and has stated that he did not recognize the accused persons and when he went to the police station, the police obtained his signature on blank papers. He has been declared hostile and cross-examined by the prosecution. The second witness of memorandum and seizure has not been examined. However the trial Court, relying upon the statement of the Investigating Officer, who recorded memorandum and affected seizure, has held that the amount was seized from custody of the appellants on the basis of their memorandum statements. There was no identification mark as the Investigating Officer has admitted in his cross-examination that no slip of Suraj Auto Traders was affixed in the bundles of note and therefore, recovery of cash amount on their memorandum cannot connect the appellants with the offence and the defence of the appellant No. 1 that the money was in fact obtained from his father under duress may be probablised.

7. On the other hand, learned counsel for the State has supported the impugned judgment and argued that there was no reason for the complainant to falsely identify the appellants as the persons who committed robbery and therefore, the Court below has rightly convicted the accused persons on the basis of dock identification.

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8. I have heard learned counsel for the parties. I have perused the record of the trial Court as also the impugned judgment.

9. As already argued by counsel for the appellants, the conviction is based on the deposition of complainant K.I. Bhaskaran and the Investigating Officer. From perusal of the statement of the complainant, it is clear that the test identification parade was conducted on 3-7-2003 after nine months of the incident and 10 days after arrest of the accused persons. He has categorically deposed in para 4 of his examination-in-chief that even before test identification parade was conducted, the accused persons were shown in Sector 3 Police Station by the police and accordingly he identified them in jail. In view of the above evidence, the test identification looses its importance and no weightage could be given to the identification of the appellants in the said test identification parade. So far as Dock identification is concerned, taking into consideration that the witness K.I. Bhaskaran was examined on 12th January, 2004 whereas the incident occurred on 2nd November 2002 i.e. more than one year after the incident and further considering that this witness was shown to the appellants in the police station as also in the test identification parade, the dock identification by this witness cannot be made the sole basis for their conviction. So far as recovery of Rs. 11,000/- from appellant Hitesh and Rs. 14,000/- from appellant Trilok Singh on the basis of their memorandums is concerned, the only witness of memorandum and seizure Raju Yadav

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	has not supported the case of the prosecution and he has only admitted his signature on the memorandum and seizure but he has denied that the amount was seized on the basis of the information given by the accused persons. Even otherwise, in the absence of any specific mark or identity in the bundles of note, the conviction cannot be based on the basis of the alleged recovery on the memo of the accused persons when the recovery is made after nine months of the incident. 10. In the result, both the appeals preferred by the appellants succeed. Their conviction under Sections 392 and 398 of I.P.C. and sentences imposed under those sections are set aside. They are acquitted of all the charges. They be set at liberty forthwith if not required in any other case. **Sd/-** **DHIRENDRA MISHRA** **Judge**	

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